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Voluntary - Public

Date: 2/19/2010

GAIN Report Number: E50015

EU-27

Post: Brussels USEU

The Treaty of Lisbon - EU Decision Making Procedures

Report Categories:

Agricultural Situation

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Report Highlights:

This report provides an overview of the consequences of the entry into force of the Treaty of Lisbon for EU decision-making procedures.

General Information:

THE TREATY OF LISBON: DECISION-MAKING PROCEDURES

INTRODUCTION

On December 1, 2009, the Treaty of Lisbon entered into force. The Treaty of Lisbon does not repeal or replace the existing treaties but amends them: it amends the Treaty on the European Union (TEU) which retains its name and the Treaty establishing the European Community which is renamed the

Treaty on the Functioning of the European Union (TFEU). This means that from now on the EU is governed by two consolidated treaties: the TEU containing provisions on the EU institutions and the TFEU containing provisions on specific EU policies and establishing procedures for the adoption of legal acts. The two Treaties have the same legal value. The Lisbon Treaty also gives the European Union a single legal personality. The term “European Community (EC)” will no longer be used but instead reference will be made to the “European Union (EU)”. For example, legal acts adopted after December 1, 2009 now have “EU” instead of “EC” in the reference number when they are published in the Official Journal. The co-decision [1] procedure has been renamed the “ordinary legislative procedure” and is the standard procedure for adopting legislative proposals.

Consolidated versions of the TEU and the TFEU can be downloaded from the European Commission’s website at <http://eur-lex.europa.eu/en/treaties/index.htm>.

[GAIN Report E48039 “Treaty of Lisbon: Agriculture & Fisheries”](#) gives an overview of the provisions established by the Treaty of Lisbon on agriculture and fisheries and the EU agriculture budget.

PROPOSALS PRESENTED BEFORE DECEMBER 1, 2009

The entry into force of the Lisbon Treaty on December 1, 2009, has several consequences for pending proposals. Proposals presented by the Commission, on the basis of the Treaties, before that date are at different stages of the decision-making procedure(s) and have to be adopted by the European Parliament (EP) and the Council.

- The articles that constitute the legal basis of proposals have changed under the Lisbon Treaty and must be renumbered. For example, the legal basis for the Novel Foods proposal is now Article 114 of the TFEU (former legal basis was Article 95 of the EC Treaty). In practice, the institutions must, each for its own account, apply the new numbering in the documents they draw up.
- The decision-making procedure will be different for some pending proposals. The Lisbon Treaty extends the “ordinary legislative procedure” (the former co-decision procedure) to a number of new fields, including agriculture and fisheries. The new procedures must be applied as from the entry into force of the Lisbon Treaty.
- For a limited number of proposals, the changes made by the Lisbon Treaty entail a change to their legal basis that goes beyond a mere change to the numbering or the legal framework..

The Commission has compiled an [indicative list of pending proposals](#) it presented before December 1, 2009. The list indicates the consequences of the entry into force of the Lisbon Treaty for each of the proposals.

WHAT CHANGES FOR AGRICULTURE?

Agriculture

The main change for agriculture is the introduction of the ordinary legislative procedure (co-decision)

which means that the European Parliament now has the same powers as the Council, i.e. the power to amend, reject or accept a Commission proposal, in all legislative policy decisions in the area of agriculture, such as for example the next reform of the CAP.

Fisheries

The main change will also be the introduction of the ordinary legislative procedure to define basic principles of the Common Fisheries Policy. However, for some important aspects of fisheries policies, the ordinary legislative procedure will not apply. For example, the yearly fixing of catch limits and quotas will be decided by the Council without involvement from the European Parliament.

Animal Health and Welfare, Plant Health and Food Safety

No major changes are expected as the ordinary legislative procedure (co-decision) already applies to food safety issues. However, legislation in the fields of animal and plant health, zootechnics and animal welfare move from the consultation procedure to the ordinary legislative procedure.

EU Budget

A new simplified procedure, the “special legislative procedure” requiring only one reading instead of two readings is introduced. The distinction between compulsory and non-compulsory CAP expenditure has been abolished which means that the European Parliament and the Council are now also on equal footing to approve the entire annual EU budget. For more detailed information on the budget approval procedure see [GAIN report E48039](#).

LEGAL ACTS: LEGISLATIVE & NON-LEGISLATIVE ACTS

The Treaty of Lisbon distinguishes between “legislative acts” and “non-legislative acts”. Legislative acts are adopted under the ordinary or special legislative procedures and directly involve the European Parliament and the Council (framework legislation). For non-legislative acts, a distinction is being made between the delegation of powers to the Commission to adopt “delegated acts” and the delegation of powers to the Commission to adopt “implementing acts” (Comitology). Non-legislative acts which may be adopted by the Commission must be of general application and may amend or supplement non-essential elements of a legislative act.

Legislative Acts (Article 289 of the TFEU)

The TFEU establishes two procedures for the adoption of legal acts. Co-decision, renamed the “ordinary legislative procedure” becomes the standard procedure under which the European Parliament and the Council jointly adopt a Commission proposal. The ordinary legislative procedure is defined in Article 294 of the TFEU. A “special legislative procedure” applies to specific cases (e.g. approval of the EU budget) provided for by the Treaties. Legal acts adopted under these legislative procedures are referred to as “legislative acts”.

Non-Legislative Acts (Articles 290 & 291 of the TFEU)

The Lisbon Treaty repeals Article 202 of the EC Treaty which was the legal basis for Comitology [2]. The current Comitology system will be replaced by two new articles which provide, under specific conditions, for the adoption of “non-legislative acts”: 1) Article 290 on “delegated acts” and 2) Article 291 on “implementing acts”.

The July 2006 Comitology reform established two procedures for the adoption of implementing measures: 1) the “regulatory procedure” with limited EP involvement and 2) the “regulatory procedure with scrutiny” giving the EP the same veto right as the Council. Prior to the Lisbon Treaty, the EP’s veto right was limited to proposals for the implementation of acts that had been adopted under co-decision. Under the Lisbon Treaty, this limitation disappears because the new articles replacing the Comitology system do not distinguish between the different (ordinary/special) legislative procedures.

In the course of 2010, a new legal framework will be drafted to set out detailed rules to replace the current Comitology system. Until a new legal framework has been adopted, the current Comitology rules will continue to apply. Existing legislation will be revised to adapt it to the new rules.

Delegated Acts (Article 290 of the TFEU)

“A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act”.

In each legislative act, the EP and the Council must define the objectives, content, scope and duration of the delegation of power to the Commission. Both institutions have the right to revoke the delegation, i.e. recall the mandate that was given to the Commission in the legislative act. A delegated act may enter into force if no objection has been expressed by the EP or the Council within the time limit set by the legislative act. The EP needs a majority of its component members; the Council qualified majority.

In December 2009, the European Commission published a [Communication on the implementation of Article 290 of the TFEU](#) to inform the European Parliament and the Council of its views on the implementation of Article 290, i.e. the scope of delegated acts, a framework for the delegation of power, procedure for adopting delegated acts and scrutiny of delegated acts. The Communication also includes a model template to provide standard wording for the legislators to define the scope of the delegation of power in future legislative acts.

Implementing Acts (Article 291 of the TFEU)

“Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the TFEU, on the Council. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall

lay down in advance the rules and general principles concerning mechanism for control by the Member States of the Commission's exercise of implementing powers."

Implementation of EU legislation is the responsibility of the Member States. However, when "uniform conditions for implementing legally binding Union acts are needed" the legislators confer the the appropriate implementing powers to the Commission. The Commission exercises those powers under the control by Member States. For article 291 to become operational, a new regulation setting out the rules and general principles for the control of these powers by the Member States must be adopted. A Commission proposal is expected in the coming weeks and will have to be adopted under the ordinary legislative procedure. When adopted, this new regulation would replace the current decision on Comitology (Council Decision 1999/468/EC) and each legislative act will make reference to the new regulation. It is not yet clear whether or how the new regulation will change the current system of management committees to adopt measures relating to the management of the common agricultural and fisheries policies.

PUBLICATION OF LEGISLATION IN THE OFFICIAL JOURNAL

Following the entry into force of the Lisbon Treaty, the structure of the Official Journal is also being changed.

Official Journal L series:

- L I Legislative acts: regulations, directives, decisions, budget
- L II Non-legislative acts: international agreements, regulations, directives, decisions, recommendations, guidelines, rules of procedure, acts adopted by bodies created by international agreements
- L III European Economic Area
- L IV Acts adopted before December 1, 2009

Official Journal C series:

- C I Resolutions, recommendations and opinions
- C II Information: interinstitutional agreements, joint declarations, information from European Union institutions, bodies, offices and agencies
- C III Preparatory acts
- C IV Notices
- C V Announcements

^[1] Under the co-decision procedure, the Council and the European Parliament have equal legislative power. If the two institutions cannot agree on a Commission proposal, it is put before a Conciliation Committee. An [overview of the co-decision procedure](#) is available on the Commission's website.

^[2] Comitology: procedure for the adoption of implementing measures by committees composed of Member States national civil servants and chaired by the Commission (Council Decision 1999/468/EC).

